

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 5th day of October, 2018, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the DEPARTMENT OF TOURISM (hereinafter referred to as "Government") and J. WALTER THOMPSON U.S.A., LLC (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor for media planning, buying and implementation and for earned and digital content strategy and creation, which duties and responsibilities are more particularly described in Addendum I (Scope of Work) attached hereto; and

WHEREAS, the Government and the contractor completed a Request for Proposal for Professional Services Number RFP-022-2017 on July 19, 2017

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument (hereinafter referred to as the "Contract"), the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide the services described in Addendum I (Scope of Work) attached hereto and made a part of this contract.

2. TERM

This Contract shall commence on October 01, 2017 and shall terminate on September 30, 2019. The Government shall have the option to renew the contract for an additional three-year period immediately following the initial term.

3. COMPENSATION

The Compensation for this Contract shall be secured on an annual basis. The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work), agrees to pay Contractor an annual retainer fee of Two Million Two Hundred Fifteen Thousand Dollars and no cents (\$2,215,000) and an annual out-of-pocket expense fee which shall not exceed Three Million Nine Hundred Forty Thousand dollars and no cents (\$3,940,000.) The sum of this contract shall not exceed Six Million One Hundred Fifty-Five Thousand Dollars and no cents (\$6,155,000) per year in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this Contract.

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4. TRAVEL EXPENSES

Included within the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed twenty-five thousand dollars (\$25,000). Travel shall be booked in the most economic class of service available.

5. PRODUCTION, PAID MEDIA, TALENT, BRAND HEALTH TRACKER, TOURISM OFFICE SUPPORT (Out of Pocket Expenses)

Upon execution of the Contract by the Government of the Virgin Islands, the Contractor will develop creative concepts, produce and distribute creative material for the USVI on behalf of the Department of Tourism for the execution of the Department of Tourism's marketing strategy. In addition to creative development, production and distribution, shall be costs associated with talent fees and the implementation of the Brand Health Tracker. Funds for Out of Pocket Expenses are not incorporated within the Contractor's retainer fee portion of the Compensation in this contract. The contractor must use commercially reasonable efforts to reduce vendor costs for these services between 10 and 15 percent due to the reduced budget restrictions. Therefore, the Government agrees to pay a cost which shall not exceed Three Million Ninety-Four Hundred Thousand dollars and no cents (\$3,940,000) annually in accordance with the provisions set forth in Addendum II (Compensation) attached hereto.

6. RECORDS

The Contractor shall present documented precise records of time and/or money expended under this Contract as approved by the Commissioner of Tourism.

7. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

8. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government. Any and all business records of the Contractor created and retained in the ordinary course of the Contractor's business shall be excluded from this Section. All administrative authorizations, passwords access codes or any other information associated with GVI/DOT accounts which are owned by the

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Government will be promptly turned over to the DOT at the termination of this contract (except for archival files retained based on document retention policies or as required by law).

9. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

10. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government, which shall not be unreasonably withheld.


11. INDEMNIFICATION

Except as otherwise provided for herein, it will be the responsibility of Contractor to make certain that the necessary contracts or releases have been obtained with or from those whose names, likenesses, testimonials, scripts, musical compositions, or other third party material or rights are used in the Government's advertising or other materials prepared under this agreement, and Contractor agrees to indemnify the Government against any liabilities and expenses (including reasonable attorneys' fees) the Government may incur as a result of claims resulting therefrom and/or proceedings relating to libel, slander, defamation, invasion of privacy, plagiarism, idea misappropriation, infringement of copyright, property right, title or slogan (other than trademark and trademark related causes of action in connection with any trademarks owned by or developed for the Government, patents, or for materials used in advertising or other marketing materials which the Government provided or took responsibility for obtaining necessary rights).

It will be the responsibility of the Government to review materials prepared under this agreement and presented by Contractor to the Government to confirm the accuracy and legality of the descriptions and depictions of the Government's products and services as well as any competitive products and services described or depicted in advertising or marketing materials prepared pursuant to this agreement, and, to the extent permitted by applicable law, the Government agrees to indemnify Contractor against any liabilities and expenses (including reasonable attorneys' fees) Contractor may incur as a result of claims resulting therefrom and/or proceedings relating to such advertising or other marketing materials relating to false, deceptive, or misleading description, depiction, or comparison of the Government's products or services, and/or competitive products or services, provided that the materials were reviewed and approved by the Government prior to their use. In any instances when the Government has provided materials for use or taken responsibility for obtaining rights for the use of materials in advertising or marketing, to the extent permitted by applicable law, the Government will indemnify Contractor with respect to any claims relating to use of such materials.

The Government understands that Contractor is a signatory to collective bargaining agreements with the Screen Actors Guild, the American Federation of Television and Radio Artists, and the American Federation of Musicians, and that the use of talent by the Contractor on the Government's behalf in commercials covered by such agreements will be subject to the terms of such agreements. The Government further recognizes that the terms of such agreements may at times be subject to differing interpretations, and that Contractor will take the position most favorable to the Government. For the avoidance of doubt, the Government shall be solely responsible for any fees associated with the use of talent in Government commercials covered by any union

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collective bargaining agreements ("Talent Fees"), including, but not limited to, any union wages, fees, residuals and/or pension and health contributions that may be required, and shall reimburse Contractor for any Talent Fees paid on the Government's behalf. To the extent permitted by applicable law, the Government therefore agrees to indemnify Contractor against any such claims from talent and/or labor organizations relating to the interpretation of any of such collective bargaining agreements for work under this agreement covered by such agreements whether such claims are asserted during or after the term.

For clarity, notwithstanding anything to the contrary herein, to the extent that the Government is legally unable to fulfill its indemnification obligations herein due to an applicable legal prohibition of law, it is expressly understood and agreed that Contractor shall not be responsible for indemnifying the Government in respect of any such claims falling under the Government's indemnification obligations hereunder. Further, it is expressly understood and agreed that the Government's indemnification obligations hereunder shall not otherwise be limited for any reason other than an applicable legal prohibition that would cause the Government's fulfillment of its indemnification obligations hereunder to violate an applicable law.

12. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and except as otherwise specified herein, nothing herein contained shall be construed to be inconsistent with this relationship or status. Notwithstanding anything to the contrary herein, for the sole and limited purpose of making authorized third party purchases and licensing of third party materials, for work under this agreement as approved in writing by the Government, Contractor shall act as agent for the Government with sequential liability so that Contractor shall not be liable to the applicable third party until after full payment for such charges by the Government.

13. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

14. WAIVERS AND AMENDMENTS

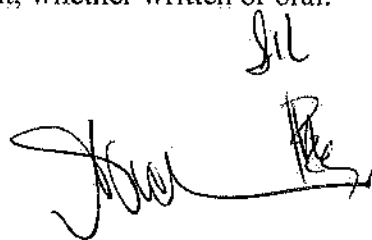
No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this Agreement. This Agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

16. RIGHT TO WITHHOLD

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If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

17. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

18. TERMINATION

Either party will have the right to terminate this Contract with or without cause on thirty [30] days written notice to the other party specifying the date of termination. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty [30] day notice.

19. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable. This partial termination shall be affected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty [30] day notice.

20. NON-DISCRIMINATION

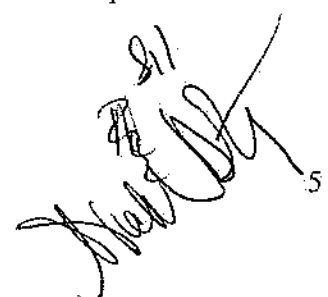
No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

21. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

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(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

(i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;

(ii) not made, negotiated or influenced this Contract, in its official capacity;

(iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

22. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.


23. INTELLECTUAL PROPERTY

As a material condition to which Contractor agrees in exchange for the opportunity to provide the Services, Contractor expressly acknowledges and agrees that all reports, documents, improvements, discoveries, inventions, processes, designs, plans, and trade secrets, whether of a technical nature or not, made or developed by Contractor alone or in conjunction with any other person or entity in connection with providing the Services, which relate to or affect the business of the Department of Tourism and are set forth in the Statement of Work ("**Intellectual Property**"), shall be the sole and exclusive property of Government of the Virgin Islands. Contractor expressly agrees to disclose and reveal to the Department of Tourism all Intellectual Property, and all information regarding Intellectual Property, concurrent with the discovery or development of the Intellectual Property. Contractor hereby assigns to the Department of Tourism all rights, title, and interests in all Intellectual Property belonging to the Government of the Virgin Islands. Contractor agrees not to use or disclose any Intellectual Property owned by the Department of Tourism to benefit a competitor, customer, individual, or other entity without the express written permission of the Commissioner of Tourism. The Government agrees that this Section 23 does not affect or apply to the following:

- i. Contractor's pre-existing processes, approaches, trade secrets, improvements, discoveries, inventions, designs, plans, and the like which are used and useable in the Contractor's business;
- ii. such items of intangible property whose use is widespread in the marketing and advertising industry;
- iii. any similar or like item of intangible property developed at any time for projects not arising from this Contract.

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Notwithstanding anything to the contrary herein, to the extent any third-party materials ("Third Party Materials") are incorporated in any materials created pursuant to this Contract with the Government's prior written permission, such Third Party Materials shall be owned by the applicable third parties and shall be subject to applicable third party rights and the terms of the applicable license agreement.

24. NOTICE

Any notice required to be given by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lloyd T. Bough, Jr.
Commissioner
Department of Property and Procurement
Sub Base, Building No. 1, Third Floor
St. Thomas, VI 00802

Beverly Nicholson Doty
Commissioner
Department of Tourism
2318 Kronprindsens Gade
P.O. Box 6400
St. Thomas, USVI 00802

CONTRACTOR

Nicholas Read
Executive Vice President
J. Walter Thompson U.S.A., LLC
466 Lexington Ave.
New York, New York 10017


25. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

26. OTHER PROVISIONS

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Addendum I, & II attached hereto is a part of this Contract and is incorporated herein by reference.


27. DEBARMENT CERTIFICATION

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

28. FALSE CLAIMS


Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offense under Virgin Islands law.

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IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

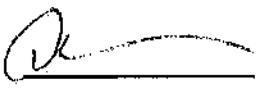
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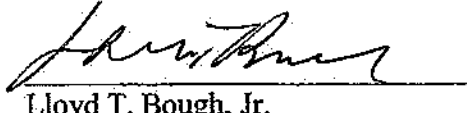
GOVERNMENT OF THE VIRGIN ISLANDS

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Beverly Nicholson Doty
Commissioner
Department of Tourism

Date

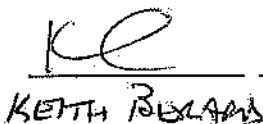
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Lloyd T. Bough, Jr.
Commissioner
Department of Property and Procurement

Date

CONTRACTOR


 8/30/18
KEITH BELAND

 8/30/18

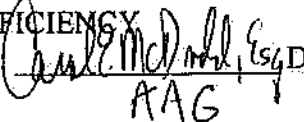
Nicholas Read
Executive Vice President
J Walter Thompson U.S.A., LLC

Date

APPROVED:

 10-05-18
Kenneth E. Mapp
GOVERNOR OF THE VIRGIN ISLANDS

Date: 10-05-18

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY  10/4/18
AAG

PURCHASE ORDER NO.

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of Contract No.
[CONTRACT NO] entered into between the Department of Property
and Procurement and
[COMPANY'S NAME]

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